IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.02.2016

Coram:

The Hon'ble Mr.Justice ***V.RAMASUBRAMANIAN***
and
The Hon'ble Mr.Justice ***N.KIRUBAKARAN***

Tax Case Appeal No.1291 of 2007

M/s. Sanra Software Ltd.
"Whispering Heights" BCO,
132, St. Mary's Road,
Alwarpet, Chennai-600 018. ... Appellant

Versus

The Dy. CIT, Company Circle VI(I),
Chennai- 600 034. ... Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the Order dated 28.09.2005 passed by the Income tax Appellate Tribunal, Chennai in ITA No.285/Mds./04.

For Appellant : Mr.V.S.Jayakumar

For Respondent : Mr.J.Narayanasamy, Standing Counsel.

JUDGMENT

V.RAMASUBRAMANIAN, J

The above Tax Case Appeal filed by the Assessee under Section 260-A of the Income Tax Act, 1961, was admitted on 29.10.2007 on the following substantial questions of law:

i. Whether the Tribunal was right in holding that the deduction under Section 80-IA is not allowable at all to the assessee since there was no taxable income though the unit eligible for deduction had net profit?

ii. Whether the Tribunal was right in holding that the provisions of Section 80-AB over-ride Section 80-IA read with Section 115-JA and so the appellant is not entitled to the deduction?

iii. Whether the Tribunal was right in holding that the claim of 80-IA is dependant on allowability of the claim rather than eligibility of the same as per the language of Section 115-JA of the Act?

iv. Whether the Tribunal was right in holding that the appellant is not eligible for deduction under Section 80-IA since the computer software manufacture concern cannot be considered as one of the items covered in that Section?

2. We have heard Mr.V.S.Jayakumar, learned counsel for the appellant and Mr.J.Narayanasamy, learned Standing Counsel for the Revenue.

3. The Appellant/Assessee has two units, one in chennai and another in Pondicherry. Admittedly, the Assessee did not maintain separate books of accounts in respect of both the units. They maintained one consolidated set of books of accounts for both the units.

4. They filed Return of Income for the Assessment year 1997-98 on 1.12.1997, declaring a loss of Rs.21,91,579/-. But they filed a revised Return reducing the loss to Rs.14,26,251/-.

5. But when the case was reopened under Section 148 of the Act, the Assessee claimed deferred revenue expenditure of Rs.18,00,786/-. The

Assessing Officer computed MAT income under Section 115JA of the Act and eventually arrived at the taxable income as Rs.1,90,960/-.

6. The Assessee filed an appeal on the ground that the Assessing Officer ought not to have upheld the claim for deduction for deferred revenue expenditure in computing the income from business. The Assessee claimed that a deduction under Section 80-IA of the Act, in respect of the income from Pondicherry unit should not have been denied.

7. By an order dated 27.11.2003, the Commissioner of Income Tax (Appeals) partly allowed the appeal, holding that the Assessee is not eligible for Section 80-IA. The Commissioner of Income Tax (Appeals) upheld the Assessee's contention with regard to deferred revenue expenditure.

8. The Revenue did not file appeal as against that portion of the order of Commissioner of Income Tax (Appeals). But the Assessee filed a Second Appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal dismissed the appeal by a judgment dated 28.09.2005. The Assessee filed an application for rectification of mistake, which was also dismissed. Therefore, the Assessee has come up with the above appeal.

9. At the outset it should be pointed out that the Assessee admittedly maintained a consolidated set of books of accounts in respect of both the units. If an Assessee does not maintain two sets of books of accounts in respect of different units, then the question of eligibility would arise only if there was a positive income. The question of deduction will not arise, if there was no positive income. In this case the Assessee having

maintained single set of books of accounts, wants to claim that there was a positive income in Pondicherry unit but there was a loss in Chennai unit. Therefore, the Assessee is not entitled to the said benefit, in view of the decision of the the Supreme Court in ***IPCA Laboratory vs. Deputy Commissioner of Income Tax [(2004) 266 ITR 521 (SC)]***.

10. However, it is contended by Mr.V.S.Jayakumar, learned counsel for the Assessee that in case of this nature, it is always open to this Court to allow the Assessee to prepare separate sets of books of accounts, as was done by the Supreme Court in ***Commissioner of Income Tax v. Bongaigaon Refinery and Petrochemical Limited [(2012) 349 ITR 352]***.

11. But we do not think that the Assessee can take advantage of this decision. In the said decision, the Supreme Court allowed a concession to an Assessee in order to put an end to the litigation. Therefore, the substantial questions of law raised by the appellant, would not arise for consideration in a case of this nature since it is covered by the decision of the Supreme Court in *IPCA Laboratory vs. Deputy Commissioner of Income Tax [(2004) 266 ITR 521 (SC)]*. Hence, the appeal is dismissed.

(V.R.S., J) (N.K.K., J)
02.02.2016

Index : Yes or No
Internet : Yes or No

To
The Income tax Appellate Tribunal, Chennai.

<u>V.RAMASUBRAMANIAN, J</u>
<u>AND</u>
<u>N.KIRUBAKARAN, J</u>

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T.C.(A) No.1291 of 2007

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